BRIEF IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI

POINT I

The Circuit Court of Appeal's decision dismissing the appeal because no supersedeas bond was filed is in conflict with decisions of this Court.

The decree dismissing the libel was entered April 26th, 1943. Thereafter Todd filed its answer and moved for a dismissal as to it. The order was not entered on this motion until June 14th, 1943. Immediately thereafter, on July 1st, 1943, an order was entered allowing the appeal to the Circuit Court and requiring a cost bond in the sum of $250. No supersedeas bond was filed by petitioner, the Court declining to give a stay sufficient for the necessary authority to be obtained from Spain.

When the appeal was argued below, the *Manuel Arnus* was still within the Southern District of Texas and within the territorial jurisdiction of both Courts (R. 135). An affidavit filed with the Circuit Court to that effect was not denied by respondent. As shown in the petition submitted herewith, the *Manuel Arnus* is still within the territorial jurisdiction of both Courts.

The only purpose of a supersedeas bond is to stay execution and in a possessory suit, pending appeal, to prevent a successful claimant from removing the vessel from the jurisdiction of the Court so as to defeat its order or decree in case the District Court be found in error. If the vessel remains in the jurisdiction of the Court she is sub-

ject at all times to the Court's orders and if the District Court be found in error, the Appellate Court can undoubtedly reverse its decree and direct the District Court to retake the vessel and deliver her to the libellant and decree damages for refusal to deliver her. It would be a sorry tribute to the administration of justice if an Appellate Court, with the subject of litigation still within its jurisdiction, could not correct an error committed by a lower Court and direct such restitution as justice might require, because a litigant by reason of poverty could not furnish a supersedeas bond. If this were an action for the recovery of possession of land which could not be removed from the jurisdiction, could it be successfully argued that both Courts had lost jurisdiction because a supersedeas bond had not been given?

This Court long ago pronounced that an actual and continual possession of the *res* was not required to sustain the jurisdiction of the Court and also held that it is only necessary that the *res* should be actually or constructively within the reach of the Court.

The Rio Grande, 23 Wall. 458.

In that case, the District Court for Alabama had dismissed a libel *in rem* and *in personam*, had allowed an appeal and fixed the amount of the bond, but before the appeal bonds were given, and because of some irregularity in the motion for the appeal, the proctor for claimants asked for and obtained from the Court an order of retention (restoration) of the vessel to them, and the Marshal having surrendered her to them, they accordingly immediately carried her out to sea (p. 460). The libellants thereafter gave their appeal bonds and the Circuit Court in spite of the removal reversed the District Court and decreed for

libellants, but the *res* had departed. She was then heard of at New Orleans and libellants libelled her anew in the District Court for Louisiana. A new owner now claimed the vessel and set up in its answer that at the time libellants took their appeal from the Alabama District Court, and when the Circuit Court rendered its decree the vessel was neither in the actual nor constructive possession of either Court but had been restored to the claimants; that as libellants had failed to move the District Court to set aside the decree of restoration or to appeal from same, they must be taken as having acquiesced in the execution of the judgment of the District Court. The District Court of Louisiana dismissed the libel but on appeal the Circuit Court reversed, as the Circuit Court of Alabama had, holding that the decision of the Circuit Court of Alabama was conclusive. The new owner appealed. This Court held that the removal of the vessel pending appeal was illegal and said:

> "We do not understand the law to be that an actual and continuous possession of the *res* is required to sustain the jurisdiction of the court" (p. 463),

citing *The Brig Ann*, 9 Cranch. 289-290, in which the Court said:

> "In order to constitute and perfect proceedings *in rem* it is necessary that the thing should be actually or constructively within the reach of the court" (p. 291).

This rule of law has been followed in the Federal Courts.

The Villarperosa, 43 F. Supp. 140 (E. D. N. Y.).

In that case the Government filed a libel for forfeiture against an Italian vessel because of wilful damages to the

vessel by its officers and crew. Thereafter the United States Maritime Commission requisitioned the vessel under the Idle Vessels Act of June 6, 1941 (50 U. S. C. A., § 193) and authorized its Secretary to take actual possession of the vessel, and resolved that the Appraisal Committee determine the compensation to be paid the owner therefor. The libellant moved for an order directing the United States Marshal and the Collector to comply with the notice of taking issued by the Maritime Commission. The Court stated that two of the questions involved were whether the Court might release the vessel to the Maritime Commission, and if it were so released, whether the order should contain a provision that if the libel for forfeiture failed, the vessel should be restored to the claimant, the owner, or fair compensation paid, and held (p. 145):

> "There is no relinquishment of jurisdiction of the vessel by the granting of the libellant's order. This Court's jurisdiction of the vessel remains even though it has not the possession of the vessel. * * * The Court would not lose jurisdiction of the vessel even though possession is lost without the consent of the Court."

It ordered the vessel to be turned over by the Marshal to the United States Maritime Commission and permitted the Marshal to appoint the master of the vessel as Special Deputy Marshal, the vessel to be turned over by him to the Maritime Commission for the purposes of the requisition and to be returned to the custody of the Marshal upon being released therefrom. It is plain that such a Deputy Marshal would have no authority to act out of his District and that the possession of the vessel became that of the Maritime Commission.

The Kaiser Wilhelm II, 246 F. 786 (C. C. A. 3).

There a libel was filed by a British corporation for repairs against the German steamship *Kaiser Wilhelm II*. The German owner answered, contending that jurisdiction should not be exercised because both litigants were at war, and payment of debts by German to British subjects was forbidden. The libellant excepted to this answer and the Court dismissed the libel. Pending the appeal war broke out between the United States and Germany and the United States Government took possession of the ship by requisition under the joint resolution of Congress, approved May 12, 1917. The Court stated, page 789:

> "The fact that the ship has now been taken from the possession of the court by the government would not prevent the court from hereafter adjudicating the several rights of the parties litigant if possession of the ship should later be restored, or if the government saw fit hereafter and of its own accord to pay into court such amount as would satisfy this lien. It is apparent, therefore, that no harm can be done to the two litigants or to the government by the lower court retaining jurisdiction of the libel for the present."
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> * * * * * * *
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> "This case is exceptional in its situation, and calls for the exercise of that range of discretion which the broad powers of a court of admiralty enable it to exercise."

The Court accordingly directed that the decree be reversed and the libel reinstated.

The only cases cited by the Circuit Court in support of its opinion that the Court lost jurisdiction *in rem* were *The Denny*, 127 F. (2d) 404 (C. C. A. 3); *Canal Steel Works, Inc.* v. *One Drag Line Dredge*, 48 F. (2d) 212 (C. C. A. 5)

and *The Kotkas*, 135 F. (2d) 917 (C. C. A. 5). In each of these cases the vessel had been removed from the territorial jurisdiction of the Court, which clearly distinguishes them from the instant case.

In the *Denny* case a libel for possession of the steamer and her cargo was filed *in rem* and *in personam* for their detention. It was stated at bar that since her release the vessel had been engaged in trade between American and Canadian ports and thus she had gone out of the jurisdiction. It also appeared that the cargo had been sold and therefore when the appeal was taken it was held that the Court had neither actual nor constructive possession of the *res*. The libellants maintained (p. 406) that the admiralty court retained jurisdiction despite the *removal* of the *res*, citing *The Rio Grande* case (*supra*), where jurisdiction was sustained in spite of such removal. In reply to this contention, the Court said:

> "In the present case the removal was neither accidental, fraudulent nor improper" (p. 407).

This shows that in the *Denny* case there was a physical removal from the district.

In *Canal Steel Works* case, decided by the same Circuit Court below, apparently the dredge which had been libelled and released by the Marshal was not in the jurisdiction when the appeal was taken or decided; otherwise Judge Foster would not have said in his opinion that there was no subject-matter upon which the judgment of the Court could operate.

That that must have been so appears from the later case decided by the same Court, *The Kotkas, supra*, cited below. In that case the *Kotkas* was libelled for possession and upon dismissal of the libel the ship was released to

its master. The Circuit Court of Apeals, Fifth Circuit, said at page 918:

> "Appeal was taken without the filing of a supersedeas bond, and it appears that the vessel is now beyond the territorial jurisdiction of the court. There is now no subject-matter upon which the judgment of this Court could operate to give relief to appellant" (citing *Canal Steel*).

The appellant contended that the libel was also *in personam* but the record showed no personal service upon the master.

From the foregoing it is apparent that the lower Court's decision is contrary to the decisions of this Court and the cases cited by the lower Court are not in point because in those cases the *res* did not remain within the territorial jurisdiction of the Courts.

POINT II

The decision of the Circuit Court in holding that it lost jurisdiction of the libel *in personam* upon dismissal of the libel *in rem* is inconsistent with a decision of the Circuit Court of Appeals of the Third Circuit.

The Circuit Court held that the only claim really asserted by petitioner was a claim to possession and that the claim for damages against Todd was merely incidental. The libel specifically avers in Article Fifth (p. 5) that on March 4th, 1943 a demand was made by libellant upon Todd for delivery and possession of the vessel which was refused, and that petitioner was damaged thereby. In its prayer for relief petitioner requested damages arising from the detention of the vessel.

There was nothing in the record to warrant the Circuit Court's conclusion that the damage for the detention of the vessel was incidental or of no substance. On the contrary it is quite apparent that this is a very real claim and that petitioner was damaged by its loss of use of the vessel.

The holding of the Circuit Court is in conflict with the decision in the case of *The Denny, supra.* Although in that case the Circuit Court of Appeals of the Third Circuit sustained the dismissal of the libel *in rem* for lack of jurisdiction, because the vessel had left the jurisdiction of the Court, the decree was reversed and the case was remanded with directions to reinstate the libel as to the claims *in personam* and to grant the parties a rehearing upon this claim. The Court said, page 407:

> "The libel, however, is not only *in rem* for possession of the vessel and cargo but also *in personam* for damages for their wrongful detention. The prayers for process and for relief are in the form customarily used in a libel which combines a suit *in rem* with one *in personam.* 2 Benedict on Admiralty, §§ 262, 263. Insofar as the suit is *in personam* this court retains the jurisdiction which it acquired when the respondents were served with process. We therefore pass to the consideration of the libellants' claims against the respondents *in personam.*"

This conflict between the Third and Fifth Circuit Courts of Appeals has never been but should be settled by this Court.

POINT III

Where the United States merely claims immunity from seizure of a vessel, it is a denial of due process to grant such immunity summarily without proof of the vessel's ownership or possession.

The possessory libel was filed *in personam* against Todd and *in rem* against the S.S. *Manuel Arnus*. The libel was not filed against the United States of America. The issues to be tried between libellant and Todd are those of ownership of the *Manuel Arnus* and the right to possession thereof and damages for detention. The United States injected itself into the suit on a suggestion of title in it and right to possession thereof, and asked that the Court prevent petitioner from having the issues between it and Todd litigated, on the ground that the Court had no jurisdiction. The decisions of the lower Courts have denied to petitioner the right to have these issues determined between it and Todd. Further considering the claims of the United States, petitioner has been denied the right to prove its ownership and right to possession as against that of the United States. The Spanish Government, as requisition owner of the *Manuel Arnus,* had a right under our Constitution to maintain this suit in our courts.

The Sapphire, 11 Wall. 164;
King of Spain v. *Oliver,* 2 Wash. C. C. 429.

The District Court dismissed the libel citing 46 U. S. C. A. 741, *et seq.,* holding that under that statute it had no jurisdiction and cited in support thereof *United States* v. *Jardine,* 81 F. (2d) 746, and *The Western Maid,* 257 U. S. 419. The District Court held that it was undisputed that

the United States had possession. The record clearly shows that possession by the United States was vigorously and specifically denied in petitioner's answer to the petition of the United States (p. 34).

The Circuit Court did not base its holding of immunity on the statute (46 U. S. C. A. 741, *et seq.*) but held that the *Jardine* case controlled. The Circuit Court also concluded that the United States had possession on the theory that the possession of a bailee for a limited purpose is that of the bailor, citing 6 Am. Jur. Sec. 91, page 213. It is submitted that this conclusion has no factual foundation. The bailment agreement between Todd and the United States was not before the Court.

Neither of the lower courts held that the United States had legal title to the Manuel Arnus. Both courts held that the United States was in possession of the vessel. This is the reverse of the claim of the United States. The government claimed it was "the sole owner of the steamship Manuel Arnus and entitled to the exclusive possession thereof" (p. 9).

The libel alleges in Paragraphs Fourth and Fifth that the *Manuel Arnus* was in the possession of Todd at its repair yard in Galveston, Texas, and that libellant demanded possession of said vessel on March 4th, 1943, which was refused (p. 5). In its petition the Government does not deny this allegation, but merely rests on an allegation that on March 11th, 1943, the United States of America was the owner of the *Manuel Arnus* and entitled to possession thereof (pp. 7 and 9). Nowhere in the petition of the United States or the exhibits attached thereto is there any statement or any documentary proof that the United States of America was in possession of the *Manuel Arnus* at the time the libel was filed on March 11th, 1943.

After the District Court entered its findings of fact and conclusions of law on April 15th, 1943, and after the final decree was entered on April 26th, 1943, the appellee Todd filed an answer on May 15th, 1943. This answer was not before the District Court when it made its decision. The reason why the Government could not prove possession appears from an examination of this answer of Todd, wherein it alleges that it received the *Manuel Arnus* from the United States Maritime Commission on November 30th, 1942, under instructions to make a survey and estimate of repairs. This is a mere allegation and cannot be considered as evidence of the bailment agreement. Neither the Government nor Todd submitted the bailment agreement to the District Court as evidence of possession by the United States. Neither the Government nor Todd offered any evidence as to when the *Manuel Arnus* was returned to the United States of America, if it was, or under what agreement. The mere allegation by Todd that "* * * Said vessel is now in the possession of the United States Maritime Commission at the yards of this respondent in Galveston, Texas," in its answer dated May 15, 1943 (pp. 29, 30), is no evidence that the *Manuel Arnus* was in the possession of the United States on March 11th, 1943. Likewise, Todd's allegation in its answer that the *Manuel Arnus* was in the possession of the United States Maritime Commission at the time the libel was filed is not evidence thereof, and, on the contrary, is inconsistent with its allegation that Todd received the steamship from the Commission on November 30th, 1942, and that it was still at its yards on May 15th, 1943 (pp. 29, 30).

Furthermore, the libel shows (p. 4), and it is admitted, that the vessel was at Todd's ship repair yards when the libel was filed. Such a possession cannot be concluded as for a limited, special or temporary purpose within the

meaning of the general proposition of law cited by the Circuit Court. If any inference is to be drawn in the absence of the bailment agreement it is that the vessel was to be repaired, refitted and made seaworthy by Todd. That is its business. The possession of such a bailee is not that of a bailor. *Long* v. *Tampico*, 16 Fed. 491.

Both decisions below are in conflict with the decision of this Court in *The Davis*, 10 Wall. 15. In determining what constituted possession to justify a claim of immunity, the Court said by Mr. Justice MILLER (p. 21):

> "But what shall constitute a possession which, in reference to this matter, protects the goods from the process of the court? The possession which would do this must be an actual possession, and not that mere constructive possession which is very often implied by reason of ownership under circumstances favorable to such implication. We are speaking now of a possession which can only be changed under process of the court by bringing the officer of the court into collision with the officer of the government, if the latter should choose to resist. The possession of the government can only exist through some of its officers, using that phrase in the sense of any person charged on behalf of the government with the control of the property, coupled with its actual possession. This, we think, is a sufficiently liberal definition of the possession of property by the government to prevent any unseemly conflict between the court and the other departments of the government, and which is consistent with the principle which exempts the government from suit and its possession from disturbance by virtue of judicial process."

There is absolutely no evidence in this case that any officer of the United States was in possession of the *Manuel Arnus* or that he was ousted of possession by the United States Marshal when the libel was filed.

Neither under common law nor under 46 U. S. C. A., Section 741, *et seq.*, was the United States entitled to have the libel dismissed.

This Court long ago pronounced the common law to be that an action may be commenced against agents or bailees of property claimed to be owned by the Government, and if the Government intervenes, it must prove its legal title or right to possession on a trial the same as any other litigant, and in such cases it cannot succeed upon a claim of immunity upon a mere suggestion of title or possession.

United States v. *Lee*, 106 U. S. 196.

In that action a suggestion had been filed by the United States claiming that the property involved was owned by the Government and had been possessed by it for years. The Court refused to recognize the claim without due proof thereof and quoted from the opinion of Chief Justice MARSHALL in the admiralty case of *United States* v. *Peters*, 5 Cranch. 115, as follows, page 210:

> " '*but it certainly can never be alleged that a mere suggestion of title in a State to property in possession of an individual must arrest the proceedings of the court, and prevent their looking into the suggestion and examining the validity of the title.*' (Italics by the court.)
>
> "The case before us is a suit against Strong and Kaufman, as individuals, to recover possession of property. The suggestion was made that it was the property of the United States, and that the court, without inquiring into the truth of this suggestion, should proceed no further; and in this case, as in that, after a judicial inquiry had made it clear that the property belonged to plaintiff and not to the United States, we are still asked to forbid the court below to proceed further, and to reverse and set

> aside what it has done, and thus refuse to perform the duty of deciding suits properly brought before us by citizens of the United States."

The Court further said, page 220:

> "Not only that no such power is given, but that it is absolutely prohibited, both to the executive and the legislative, to deprive anyone of life, liberty, or property without due process of law, or to take private property without just compensation."

See also:

> *Philadelphia Co.* v. *Stimson Co.*, 223 U. S. 605, at 619.

The case of *U. S.* v. *Jardine, supra,* relied upon by the Circuit Court, is directly in conflict with the principle enunciated in the above case. The Circuit Court for the Fifth Circuit there held that libellant had no right to try out the issues of title and rightful possession of a Coast Guard cutter by the United States on the theory that the possession of a public vessel by the Government under a claim of right prevented libellant from trying out the title to ascertain if the possession was rightful. In support of its contention the Court cited *The Siren,* 7 Wall. 152. That case does not support such a conclusion. There, this Court held that the lower Court had jurisdiction of a claim against the proceeds of a vessel sold as a prize where the United States had libeled the vessel.

The statute, 46 U. S. C. A. 741, relied upon by the District Court provides:

> "Exemption of United States vessels and cargoes from arrest or seizure.
>
> No vessel owned by the United States * * * or in the possession of the United States * * * shall * * * be subject to arrest or seizure * * *."

The statute does not say a vessel claimed to be owned by the United States or claimed to be in its possession is immune from seizure. Certainly a reasonable interpretation of the language used, which is the only interpretation permitted, is that the words "owner" and "possession" mean "rightful" owner and "rightful" possession. No intent could be attributed to the legislature to authorize immunity for "wrongful" ownership or "wrongful" possession by the Government. The painstaking care which the legislature takes to safeguard a grant of requisitioning power in the Government is ample evidence that the statute now in question cannot have been intended to provide a cloak of immunity for wrongful ownership or wrongful possession. It is submitted that the statute was intended to prevent interference with the Government in the operation of merchant vessels actually owned by it and in its possession and engaged in carrying out the Government's business. *Banque-Russo* v. *U. S. Shipping Board*, 266 F. 897. A vessel undergoing repairs preparatory for service is not such a vessel in possession of the Government. *Long* v. *The Tampico, supra.*

A court interpretation of any statute which would permit recovery upon a mere claim of ownership or possession without evidence thereof, where a statute specifically provides for a recovery only on condition of ownership or possession, would be universally condemned.

Thus, the decisions of the lower Courts, under both common law and the statute, are in conflict with the decisions of this Court.

POINT IV

The principle of sovereign immunity of the United States should not be applied in derogation of the rights of another sovereign under international law.

The District Court refused to inquire into the validity of the proceedings under which the Republic of Mexico claimed to have acquired the *Manuel Arnus* and cited *Underhill* v. *Hernandez*, 168 U. S. 250; *Oetjin* v. *Central Leather Co.*, 246 U. S. 297; *Banco de Espana* v. *Federal Reserve Bank*, 114 F. (2d) 438, and similar cases in support of its contention. These cases are authority for the proposition that our Courts will not inquire into the acts of foreign sovereign powers committed within their territorial limits. Petitioner has no quarrel with this law, but contends that it is not applicable to the facts of this case. The Circuit Court made no comment on this phase of the case. Under well-recognized principles of international law the lower Courts should have inquired into the acts of the Mexican Government which occurred in waters extra-territorial to Mexico, and if they had done so, they would have found that petitioner is the rightful owner and entitled to possession of the *Manuel Arnus*.

The facts clearly show that while the *Manuel Arnus* was owned by a Spanish corporation and lawfully in Cuban waters she was illegally and by force and ruse seized by the armed forces of the Government of Mexico and taken to Mexico. This act did not occur within the territorial limits of Mexico so as to make applicable the law of the *Underhill* and similar cases. It was an act which occurred without the territorial waters of Mexico and the United States and the applicable law is international law which the lower Courts refused to consider.

Since the original taking by the Government of Mexico was illegal, the subsequent acts of the Government of Mexico, such as the purported declaration of abandonment and the sale of the vessel to the United States, did not purge the original wrong. It was a continuing wrong. The *Manuel Arnus* was brought into the territorial waters of Mexico without authority of its owner, contrary to its express protest and in violation of the decrees of the Cuban Courts, and, therefore, it was not subject to the Mexican law, and when it was later taken into the territorial waters of the United States without the consent of its owner it was entitled to immunity from the laws of the United States. International law is the applicable law.

It is a fundamental proposition that international law is a part of the law of the land and must be administered whenever it is involved in cases presented to our Courts for determination.

> *The Paquete Habana,* 175 U. S. 677, page 700:
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> "International law is part of our law, and must be ascertained and administered by the courts of justice of appropriate jurisdiction, as often as questions of right depending upon it are duly presented for their determination."

> *The Lusitania,* 251 Fed. 715, page 732:
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> "The United States courts recognize the binding force of international law."

It is a well-recognized principle of international law that where a foreign vessel enters territorial waters of another nation on account of *force majeure* the vessel and owners are entitled to immunity from the laws of the local jurisdiction.

The New York, 3 Wheaton 59.

The *New York* was libelled for importation of certain cargo into the United States in violation of the Non-Intercourse Act of March 1st, 1809 between Great Britain and the United States. A claim was interposed on the ground that the vessel was compelled to put into the port of New York due to the fact that it was disabled by stress of weather. While the Court held that the allegations that the vessel was compelled to enter the port of New York by stress of weather were not established, it recognized the principle of international law that the vessel would not have been subject to the laws of the United States, if it had been forced into New York by stress of weather, in saying, page 68:

> "The necessity must be urgent, and proceed from such a state of things as may be supposed to produce on the mind of a skillful mariner, a well-grounded apprehension of the loss of vessel or cargo, or of the lives of the crew."

See also:

Kansas v. *Colorado*, 206 U. S. 46;
The Aeolus, 3 Wheaton 392;
Brig Short Staple v. *United States*, 9 Cranch. 55 (1815);
The Nuestra Senora de Regla, 17 Wall. 29;
United States v. *Eagle Indemnity Co.*, 18 F. (2d) 135, affd. 22 F. (2d) 388, cert. den. 276 U. S. 624;
The Squanto, 13 F. (2d) 548, cert. den. 273 U. S. 727.

It has also been recognized in the lower Courts.

United States v. *Sullivan, et al.*, 26 F. (2d) 606;
The Louise F., 293 Fed. 933.

The foremost text writers on international law recognize this well established principle.

> Hackwork, *Digest of International Law*, Vol. II, page 277;
> Jessup, *Law of Territorial Waters and Maritime Jurisdiction*, pages 194-208;
> Moore, *International Law Digest*, Vol. II, pages 339 to 362.

The United States Department of State has vigorously supported the immunity of vessels which enter foreign ports due to stress or seizure.

> *The Rebecca*, Moore's *International Law Digest*, pages 345, 346. Report of Mr. Bayard Sec. of State, Feb. 26, 1887, S. Ex. Doc. 109, 49 Cong., 2 sess.

The United States through its attorneys general in the past has repeatedly expressed its opinion in favor of the principle contended for by petitioner herein.

> 1 Opinions of Attorneys General 509—the *Maria;*
> 4 Opinions of Attorneys General 98—the *Industria.*

Although the Circuit Court did not base its decision under the Statute 46 U. S. C. A. 471, *et seq.*, as did the District Court it is submitted that this statute should have been construed in harmony with international law. This principle was recognized by this Court in a case involving facts somewhat similar to those involved in the present case.

Alexander Murray v. *Schooner Charming Betsy*, 2 Cranch. 64, 1 U. S. 450.

The *Charming Betsy*, an American vessel owned by citizens of the United States, sailed from Baltimore April 10th, 1800, for St. Bartholomew's for the purpose of being sold. The cargo on board was sold at St. Bartholomew's, but the vessel could not be sold there so the captain proceeded with her to the Island of St. Thomas. There she was sold to one Jared Shattuck who put a cargo aboard and cleared her out as a Danish vessel for the Island of Guadeloupe. On her way she was captured by a French privateer as a prize. She was subsequently recaptured by Captain Murray, captain of the frigate *Constellation*, and taken to Martinique. When she got to Martinique her captain claimed to have his vessel and cargo restored as being the property of a Dane. Shattuck was born in the United States, but had moved to St. Thomas where he became a Danish subject. Captain Murray, however, considered Shattuck an American citizen who had violated the law prohibiting intercourse between the United States and France and the sale of the vessel as a mere subterfuge to avoid that law, so he sold the cargo in Martinique and brought the vessel to Philadelphia where she was libelled under the non-intercourse law. The cargo and vessel were claimed by the Danish consul as being the *bona fide* property of a Danish subject.

The lower Court declared the seizure was illegal and that the vessel should be restored and the proceeds of the cargo paid to the claimant, together with the damages Shattuck sustained by reason of the premises. The Circuit Court affirmed the decree so far as it directed restitution of the vessel and payment to the claimant of the net proceeds of the sale of the cargo, and reversed as to the rest.

Chief Justice MARSHALL, speaking for the Supreme Court of the United States, in construing the non-intercourse federal act, said at page 452:

> "It has also been observed that an act of congress ought never to be construed to violate the law of nations if any other possible construction remains, and, consequently, can never be construed to violate neutral rights, or to affect neutral commerce, further than is warranted by the law of nations as understood in this country.
>
> These principles are believed to be correct, and they ought to be kept in view in construing the act now under consideration."

The Court held that the vessel was not liable to confiscation, that the recaptors were not entitled to salvage and affirmed the decree of the Circuit Court so far as it affirmed the decree of the District Court which directed restitution of the vessel and payment to the claimant of the net proceeds of the sale of the cargo; and reversed and modified that portion of the decree whereby the claim of the owner for damages for the seizure and retention of his vessel was rejected.

The decisions below are also in violation of international comity. Petitioner submitted a certification by Juan F. de Cardenas, Ambassador of Spain to the United States, wherein he definitely states that pursuant to the Spanish law of September 1, 1939, and the decree of September 23, 1939, which are attached to his certification, the "ownership of the S.S. *Manuel Arnus* became vested in Compania Trasatlantica Administrada por el Estado, a company administered by the Spanish State, and that since September 23rd, 1939, the company has continued to own the vessel." The United States submitted a certification of the Mexican Ambassador of the law cited in the Declaration of Aban-

donment. There is no certification by the Mexican Ambassador that Mexico acquired title to the *Manuel Arnus* by virtue of the Declaration of Abandonment.

The lower Courts were thus confronted with a representation of ownership by one friendly nation, Spain, and a representation of ownership by the United States based upon a certification of a law cited in a Declaration of Abandonment by another friendly nation, Mexico. It completely ignored the representations of the Spanish Ambassador but chose to accept the representations of the Mexican Ambassador which did not prove ownership in the Mexican Government prior to the delivery of the bill of sale to the United States by Mexico. It is a dangerous precedent to accept the representations of one friendly foreign sovereign to the benefit of our Government and ignore those of another friendly foreign sovereign. Respect for foreign dignity short of equality with our own is frowned upon by our courts.

Long v. *The Tampico*, 16 Fed. 491, 495:

> "By international comity, and that tacit agreement which constitutes the law of nations, every government accords to every other friendly power the same respect to its dignity and sovereignty, and the same consequent immunity from suit, both as respects the person of the sovereign as well as the national property devoted to the public service, which it enjoys itself within its own dominions."

Furthermore, in considering the equities of the United States and of the Spanish Government, the United States of America, prior to its purchase of the *Manuel Arnus*, was advised by petitioner of the illegal seizure of the vessel by the Mexican Government (pp. 106-108). The United States of America was not an innocent purchaser for value.

It had a duty the same as any other purchaser to make inquiries when put on notice as to the illegality of the title of the Mexican Government. There is no evidence that it made such inquiry.

The lower Court's decision should be reviewed because of its failure to recognize the injustice committed petitioner in violation of well established principles of international law. Petitioner owned the *Manuel Arnus*. It was illegally seized by Mexico, sold to the United States and petitioner has not been compensated. The importance and novelty of the questions involving two friendly powers, Mexico and Spain, requires consideration and a decision by our highest Court.

CONCLUSION

It is respectfully submitted that this petition for writ of certiorari to review the decree of the Circuit Court of Appeals for the Fifth Circuit should be granted.

July 14th, 1944.

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